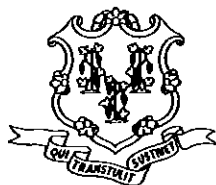


# The Connecticut General Assembly

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HB 5542

An Act Making Minor, Technical and Conforming Changes to Certain Statutes  
Concerning Criminal and Civil Law and Procedure.

Judiciary Committee  
Public Hearing  
March 26, 2010

Explanation of changes:

### **Section 1. Section 18-81t(a)**

Accuracy. Corrects language enacted in public act 09-39 by requiring that the first report had to be submitted thirty days after September 30, 2009, rather than after the "close of the first calendar quarter of the fiscal year ending June 30, 2009," which yielded the already-passed date of September 30, 2008, and by adding back the reference to "inmate" disciplinary reports that was inadvertently deleted in the public act.

### **Sec. 2. Section 34-532(e)**

Inserts language inadvertently omitted when the section was enacted in 1994. The provisions concerning the procedure for an agent for service of process appointed by a business entity to notify the Secretary of the State of a new address and of his or her resignation as the agent is standard language that appears in the statutes for domestic limited partnerships, foreign limited partnerships, domestic limited liability companies, foreign limited liability companies and domestic statutory trusts. See sections 34-13b(e), 34-38p(e), 34-104(c), 34-224(e) and 34-507(c). Apparently, when this section concerning foreign statutory trusts was drafted, the typist skipped from one reference to "the Secretary of the State" to the next, inadvertently omitting the language in between.

### **Sec. 3. Section 45a-676(c)**

Deletes reference to a repealed section.

#### **Sec. 4. Section 46b-15(b)**

Conforms language to similar language in sections 46b-38c(e) and 54-1k, enacted as part of the same 2007 public act (PA 07-78), for consistency purposes and to clarify and reflect legislative intent that the pet protection order is part of the initial order protecting the applicant, children and others, and not a separate order to protect only the animal.

#### **Sec. 5. Section 46b-38b(d)**

Accuracy. A victim does not file an arrest warrant but files an affidavit for an arrest warrant.

#### **Sec. 6. Section 46b-86(a)**

Language repositioned for clarity and accuracy. The language in brackets concerning modification of a requirement to maintain life insurance was added by a floor amendment in 2001. (See LCO 7035 to HB 6126). The sponsor of the amendment, Rep. John Wayne Fox, explained that the amendment "would allow for modification for the required maintenance of life insurance. Under existing law as it is interpreted, the court does not have authority to modify a life insurance provision of a separation agreement or judgment." However, the placement of this new language in the first sentence by the amendment resulted in an awkward and grammatically confusing sentence. In response to a question as to whether a showing of a change in circumstances is required, Rep. Fox acknowledged that the placement of the new language was not the best by replying: "It's not entirely clear from the way in which the amendment is drafted, although it does come under 46b-86. The answer to your question is yes, you would have to establish a substantial change in circumstances, as you do with other provisions of the statute." - The language added by the floor amendment is repositioned and included in the list of orders that may be modified for clarity, readability and accuracy.

#### **Sec. 7. Section 49-9a.**

Technical changes for consistency in terminology and accuracy.

#### **Sec. 8. Section 51-164n(b)**

Accuracy. Prior to the 2007 session, the penalty set forth in subsection (a) of section 20-341 was a \$200 fine that did not require a court appearance and could be mailed in. Public act 07-188, section 2, changed the penalty from a fine only to a class B misdemeanor, which would require a court appearance. Consequently, the reference to "subsection (a) of section 20-341" should be deleted from this provision that allows fine-only violations to be mailed in.

#### **Sec. 9. Section 52-225a**

Consistency in wording between subsections (a) and (c).

## **Sec. 10. Section 52-553**

Accuracy. The Supreme Court in the recent case of Sokaitis v. Bakaysa, 293 Conn. 17 (August 17, 2009), concluded that this section, which on its face prohibits all gambling wagers and wagering contracts, had to be read as if it said "except as otherwise provided by law" to acknowledge the fact that the legislature had sanctioned various forms of legal gambling since this statute was enacted in 1902.

Justice Zarella wrote: "Clearly this {section 52-553} cannot be the absolute law of a state that has authorized a lottery...the establishment of off-track betting facilities...pari-mutuel betting...and entered into tribal-state compacts to administer the operation of casinos..."

The unanimous court upheld an agreement between two sisters to split all lottery or casino winnings despite the statute and held that the legislature had "intended to exempt from the operation of section 52-553 those contracts supported by consideration in the form of money won or bet in the course of *legal* gambling."

The proposed change adds the exception for legal gambling wagers and contracts that the Supreme Court read into the statute.

## **Sec. 11. Section 52-593a**

Accuracy. In 2000, public act 00-99 reformed the sheriff system. Those reforms included eliminating the high sheriffs and replacing process-serving deputy sheriffs with state marshals. When this section was amended in 2000, two inadvertent errors were made. Although the public act mechanically replaced references to "deputy sheriff" with the new title "state marshal" throughout the general statutes, in this section the public act inadvertently replaced the broader term "officer", which includes not only a deputy sheriff but also a constable or other proper officer (all of whom are authorized to serve process under section 52-50), with the narrower term "state marshal". Also, in deleting a provision that allowed the process to be personally delivered to the office of the high sheriff, the public act inadvertently deleted the phrase "within the time limited by law". That was a requirement that applied not only to the delivery of process to the office of a high sheriff but also to the delivery of process to any and all officers.

The section is therefore revised to restore its applicability to not only state marshals but also to constables and other proper officers and to clarify that the process must still be delivered to the officer within the time limited by law to bring the action.

In Abitz v. Fierer (2008), a Superior Court judge held that: "The court concludes that in amending section 52-593a, the general assembly did not intend to exclude process served by constables from its saving effect. Proper interpretation of section 52-593a, as amended by Public Act 00-99, leads to the conclusion that the statute is available to save an action in which the plaintiff places process in the hands of a constable for service within the time limited by statute and it is served by the constable within the next thirty days."

In the recent Supreme Court case of Tayco Corp. v. Planning & Zoning Commission, 294 Conn. 673 (February 2, 2010), the court stated that although since 2000 the statute did not specify that the process must be delivered to the marshal within the relevant

statute of limitations, to find otherwise would lead to the absurd result that a party could commence an action at any time provided the marshal serves the process within thirty days. The court therefore held that "for the purposes of section 52-593a, delivery of process to the marshal must be made within the applicable limitations period."

**Sec. 12. Section 53-205**

Technical changes for clarity and consistency with the style of the general statutes.

**Sec. 13. Section 53-278g(a)**

Accuracy. The enactment of Public Act 93-332 authorized the Division of Special Revenue to transfer ownership of the off-track betting system. As a result of the passage of that act, the off-track betting system has been operated not by the state but by a licensee. This proposed change would reflect that reality and make clear that a person who participates in off-track betting, whether conducted by the state or a licensee, is not committing the criminal offense of gambling.

**Sec. 14. Section 53-289c(b)**

Grammar, usage.

**Sec. 15. Section 53a-19(b)**

Accuracy and consistency. An inspector is "designated", not "appointed" by the Commissioner of Motor Vehicles under section 14-8, and "motor vehicle inspector" is the term used most frequently in the statutes.

**Sec. 16. Section 53a-22**

Accuracy and consistency. An inspector is "designated", not "appointed" by the Commissioner of Motor Vehicles under section 14-8, and "motor vehicle inspector" is the term used most frequently in the statutes.

**Sec. 17. Section 53a-23**

Accuracy and consistency. An inspector is "designated", not "appointed" by the Commissioner of Motor Vehicles under section 14-8, and "motor vehicle inspector" is the term used most frequently in the statutes.

**Sec. 18. Section 53a-35a**

Accuracy, clarity. The list of exceptions to the authorized minimum and maximum terms of imprisonment for the classes of felonies is incomplete. Over the years many penalty provisions have been changed or new crimes have been enacted that required mandatory minimum sentences, yet those sections are not referenced here. Rather than listing all the exceptions, and the circumstances under which those mandatory minimums come into play (e.g. where the victim is under 16 years of age; where computer crime for terrorist purposes is directed at a public agency; etc.), a general exception is added.

#### **Sec. 19. Section 53a-36**

Accuracy, clarity. The list of exceptions to the authorized terms of imprisonment for the classes of misdemeanors is incomplete. Over the years many penalty provisions have been changed or new crimes have been enacted that required mandatory minimum sentences for certain misdemeanors, yet those sections are not referenced here. Rather than listing all the exceptions, and the circumstances under which those mandatory minimums come into play, a general exception is added.

#### **Sec. 20. Section 53a-39(d)**

Parallelism.

#### **Sec. 21. Section 53a-40b**

Accuracy. Prior to the 2007 session, section 53a-222 concerned the offense of violation of conditions of release. In the 2007 session, public act 07-123, split that offense in two, creating violation of conditions of release in the first degree, a class D felony, limited to when a person was charged with a felony, and creating violation of conditions of release in the second degree, a class A misdemeanor, applicable to a person charged with a misdemeanor or motor vehicle violation for which a sentence to a term of imprisonment may be imposed. The latter, "new" offense is now codified at Sec. 53a-222a. Since section 53a-40b only contains a reference to section 53a-222, which is now just the first degree crime, it should be amended to also include a reference to the second degree crime, i.e. section 53a-222a.

#### **Sec. 22. Section 53a-167a(a)**

Accuracy and consistency. An inspector is "designated", not "appointed" by the Commissioner of Motor Vehicles under section 14-8, and "motor vehicle inspector" is the term used most frequently in the statutes. A reference to "motor vehicle inspector" that was inadvertently omitted in public act 08-150 is also added.

#### **Sec. 23. Section 53a-167b(a)**

Accuracy and consistency. An inspector is "designated", not "appointed" by the Commissioner of Motor Vehicles under section 14-8, and "motor vehicle inspector" is the term used most frequently in the statutes. A reference to "motor vehicle inspector" that was inadvertently omitted in public act 08-150 is also added.

#### **Sec. 24. Section 53a-167c(a)**

Accuracy and consistency. An inspector is "designated", not "appointed" by the Commissioner of Motor Vehicles under section 14-8, and "motor vehicle inspector" is the term used most frequently in the statutes.

**Sec. 25. Section 53a-174b**

The section is restructured to conform to the customary format of a title 53a (penal code) section.

**Sec. 26. Section 53a-192a(a)**

Conforms to language used in definition of "trafficking" in section 46a-170, the federal trafficking law (18 USC 1589) and the trafficking laws of most other states.

**Sec. 27. Section 54-86m**

Consistency with style of general statutes.

**Sec. 28. Section 54-102l**

Under section 54-102g(c), a person who has been convicted or found not guilty by reason of mental disease or defect pursuant to section 53a-13 of certain crimes is required to submit to the taking of a DNA sample. Section 54-102l authorizes a person whose DNA profile has been included in the data bank to request its expungement if his or her criminal conviction has been reversed and the case dismissed. But the section fails to include the other circumstance where a DNA profile would be included in the data bank, namely a finding of not guilty by reason of mental disease or defect. For accuracy and consistency, the section is revised to also include the circumstance where a finding of not guilty by reason of mental disease or defect has been reversed and the case dismissed.

**Sec. 29. Section 54-124a(h)**

Deletion of obsolete language. Section 54-125b, which had authorized an administrative parole process, was repealed by public act 08-1 of the January special session, effective July 1, 2008. The language concerning the actions of the Board of Pardons and Paroles prior to July 1, 2008, and the references to the now-repealed section 54-125b are deleted as obsolete.

**Sec. 30. Section 54-125a(a)**

Accuracy. In 1993, public act 93-319 revised the class of inmates over which the Board of Parole (now the Board of Pardons and Paroles) had jurisdiction from those sentenced to a definite or aggregate sentence of more than "one year" to those sentenced to more than "two years". That change was made in the first sentence of this subsection, but the necessary corresponding change was not made in the last sentence. Persons sentenced to less than two years are released by the Department of Correction, not the Board of Pardons and Parole.

**Sec. 31. Section 54-201(4)**

Clarity.

**Sec. 32. Section 54-260b(a)**

Accuracy. The defined term "wire communication" is not used in this section which was enacted in 2007.